First Regular Session of the 123rd General Assembly (2023)



# SENATE ENROLLED ACT No. 2

AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-3-1-3.5, AS AMENDED BY P.L.180-2022(ss), SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Except as provided in subsection (c), add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(3) Subtract one thousand dollars ($1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars ($1,000).

(4) Subtract one thousand dollars ($1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code (as effective January 1, 2017);

(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:

(A) One thousand five hundred dollars ($1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code (as effective January 1, 2004).

(B) One thousand five hundred dollars ($1,500) for each exemption allowed under Section 151(c) of the Internal Revenue Code (as effective January 1, 2017) for an individual:

(i) who is less than nineteen (19) years of age or is a full-time student who is less than twenty-four (24) years of age;

(ii) for whom the taxpayer is the legal guardian; and

(iii) for whom the taxpayer does not claim an exemption under clause (A).

(C) Five hundred dollars ($500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the federal adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars ($40,000). In the case of a married individual filing a separate return, the qualifying income amount in this clause is equal to twenty thousand dollars ($20,000).

(D) Three thousand dollars ($3,000) for each exemption allowed under Section 151(c) of the Internal Revenue Code (as effective January 1, 2017) for an individual who is:

(i) an adopted child of the taxpayer; and

(ii) less than nineteen (19) years of age or is a full-time student who is less than twenty-four (24) years of age.

This amount is in addition to any amount subtracted under clause (A) or (B).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction from adjusted gross income.

(7) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement

annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).

(8) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.

(9) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), and (5) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(10) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(11) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.

(12) Subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse if the taxpayer and the taxpayer's spouse file a joint income tax return or the taxpayer is otherwise entitled to a deduction under this subdivision for the taxpayer's spouse, or both.

(13) Subtract an amount equal to the lesser of:

(A) two thousand five hundred dollars ($2,500), or one thousand two hundred fifty dollars ($1,250) in the case of a married individual filing a separate return; or

(B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.

(14) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.

(15) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made

under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(16) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(17) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding the sum of:

(A) twenty-five thousand dollars ($25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(18) Subtract an amount equal to the amount of the taxpayer's qualified military income that was not excluded from the taxpayer's gross income for federal income tax purposes under Section 112 of the Internal Revenue Code.

(19) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and

(B) included in the individual's federal adjusted gross income

under the Internal Revenue Code.

(20) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract the amount necessary from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(21) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.

(22) Subtract an amount as described in Section 1341(a)(2) of the Internal Revenue Code to the extent, if any, that the amount was previously included in the taxpayer's adjusted gross income for a prior taxable year.

(23) For taxable years beginning after December 25, 2016, add an amount equal to the deduction for deferred foreign income that was claimed by the taxpayer for the taxable year under Section 965(c) of the Internal Revenue Code.

(24) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(25) Subtract the amount that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code for taxable years ending after December 22, 2017.

(26) For taxable years beginning after December 31, 2019, and

before January 1, 2021, add an amount of the deduction claimed under Section 62(a)(22) of the Internal Revenue Code.

(27) For taxable years beginning after December 31, 2019, for payments made by an employer under an education assistance program after March 27, 2020:

(A) add the amount of payments by an employer that are excluded from the taxpayer's federal gross income under Section 127(c)(1)(B) of the Internal Revenue Code; and

(B) deduct the interest allowable under Section 221 of the Internal Revenue Code, if the disallowance under Section 221(e)(1) of the Internal Revenue Code did not apply to the payments described in clause (A). For purposes of applying Section 221(b) of the Internal Revenue Code to the amount allowable under this clause, the amount under clause (A) shall not be added to adjusted gross income.

(28) Add an amount equal to the remainder of:

(A) the amount allowable as a deduction under Section 274(n) of the Internal Revenue Code; minus

(B) the amount otherwise allowable as a deduction under Section 274(n) of the Internal Revenue Code, if Section 274(n)(2)(D) of the Internal Revenue Code was not in effect for amounts paid or incurred after December 31, 2020.

(29) For taxable years beginning after December 31, 2017, and before January 1, 2021, add an amount equal to the excess business loss of the taxpayer as defined in Section 461(l)(3) of the Internal Revenue Code. In addition:

(A) If a taxpayer has an excess business loss under this subdivision and also has modifications under subdivisions (15) and (17) for property placed in service during the taxable year, the taxpayer shall treat a portion of the taxable year modifications for that property as occurring in the taxable year the property is placed in service and a portion of the modifications as occurring in the immediately following taxable year.

(B) The portion of the modifications under subdivisions (15) and (17) for property placed in service during the taxable year treated as occurring in the taxable year in which the property is placed in service equals:

(i) the modification for the property otherwise determined under this section; minus

(ii) the excess business loss disallowed under this subdivision;

but not less than zero (0).

(C) The portion of the modifications under subdivisions (15) and (17) for property placed in service during the taxable year treated as occurring in the taxable year immediately following the taxable year in which the property is placed in service equals the modification for the property otherwise determined under this section minus the amount in clause (B).

(D) Any reallocation of modifications between taxable years under clauses (B) and (C) shall be first allocated to the modification under subdivision (15), then to the modification under subdivision (17).

(30) Add an amount equal to the amount excluded from federal gross income under Section 108(f)(5) of the Internal Revenue Code. For purposes of this subdivision:

(A) if an amount excluded under Section 108(f)(5) of the Internal Revenue Code would be excludible under Section 108(a)(1)(B) of the Internal Revenue Code, the exclusion under Section 108(a)(1)(B) of the Internal Revenue Code shall take precedence; and

(B) if an amount would have been excludible under Section 108(f)(5) of the Internal Revenue Code as in effect on January 1, 2020, the amount is not required to be added back under this subdivision.

(31) For taxable years ending after March 12, 2020, subtract an amount equal to the deduction disallowed pursuant to:

(A) Section 2301(e) of the CARES Act (Public Law 116-136), as modified by Sections 206 and 207 of the Taxpayer Certainty and Disaster Relief Tax Act (Division EE of Public Law 116-260); and

(B) Section 3134(e) of the Internal Revenue Code.

(32) Subtract the amount of an annual grant amount distributed to a taxpayer's Indiana education scholarship account under IC 20-51.4-4-2 that is used for a qualified expense (as defined in IC 20-51.4-2-9) or to an Indiana enrichment scholarship account under IC 20-52 that is used for qualified expenses (as defined in IC 20-52-2-6), to the extent the distribution used for the qualified expense is included in the taxpayer's federal adjusted gross income under the Internal Revenue Code.

(33) For taxable years beginning after December 31, 2019, and before January 1, 2021, add an amount equal to the amount of unemployment compensation excluded from federal gross income under Section 85(c) of the Internal Revenue Code.

(34) For taxable years beginning after December 31, 2022, subtract an amount equal to the deduction disallowed under Section 280C(h) of the Internal Revenue Code.

(35) Subtract any other amounts the taxpayer is entitled to deduct under IC 6-3-2.

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code (concerning charitable contributions).

(3) Except as provided in subsection (c), add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code (concerning foreign tax credits).

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding the sum of:

(A) twenty-five thousand dollars ($25,000) to the extent

deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(8) Add to the extent required by IC 6-3-2-20:

(A) the amount of intangible expenses (as defined in IC 6-3-2-20) for the taxable year that reduced the corporation's taxable income (as defined in Section 63 of the Internal Revenue Code) for federal income tax purposes; and

(B) any directly related interest expenses (as defined in IC 6-3-2-20) that reduced the corporation's adjusted gross income (determined without regard to this subdivision). For purposes of this clause, any directly related interest expense that constitutes business interest within the meaning of Section 163(j) of the Internal Revenue Code shall be considered to have reduced the taxpayer's federal taxable income only in the first taxable year in which the deduction otherwise would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(9) Add an amount equal to any deduction for dividends paid (as defined in Section 561 of the Internal Revenue Code) to shareholders of a captive real estate investment trust (as defined in section 34.5 of this chapter).

(10) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and

(B) included in the corporation's taxable income under the

Internal Revenue Code.

(11) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(12) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.

(13) For taxable years beginning after December 25, 2016:

(A) for a corporation other than a real estate investment trust, add:

(i) an amount equal to the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1; or

(ii) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code; and

(B) for a real estate investment trust, add an amount equal to the deduction for deferred foreign income that was claimed by the taxpayer for the taxable year under Section 965(c) of the Internal Revenue Code, but only to the extent that the taxpayer included income pursuant to Section 965 of the Internal Revenue Code in its taxable income for federal income tax purposes or is required to add back dividends paid under subdivision (9).

(14) Add an amount equal to the deduction that was claimed by the taxpayer for the taxable year under Section 250(a)(1)(B) of the Internal Revenue Code (attributable to global intangible low-taxed income). The taxpayer shall separately specify the amount of the reduction under Section 250(a)(1)(B)(i) of the

Internal Revenue Code and under Section 250(a)(1)(B)(ii) of the Internal Revenue Code.

(15) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(16) Subtract the amount that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code for taxable years ending after December 22, 2017.

(17) Add an amount equal to the remainder of:

(A) the amount allowable as a deduction under Section 274(n) of the Internal Revenue Code; minus

(B) the amount otherwise allowable as a deduction under Section 274(n) of the Internal Revenue Code, if Section 274(n)(2)(D) of the Internal Revenue Code was not in effect for amounts paid or incurred after December 31, 2020.

(18) For taxable years ending after March 12, 2020, subtract an amount equal to the deduction disallowed pursuant to:

(A) Section 2301(e) of the CARES Act (Public Law 116-136), as modified by Sections 206 and 207 of the Taxpayer Certainty and Disaster Relief Tax Act (Division EE of Public Law 116-260); and

(B) Section 3134(e) of the Internal Revenue Code.

(19) For taxable years beginning after December 31, 2022, subtract an amount equal to the deduction disallowed under Section 280C(h) of the Internal Revenue Code.

(20) Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;

under IC 6-3-2.

(c) The following apply to taxable years beginning after December 31, 2018, for purposes of the add back of any deduction allowed on the taxpayer's federal income tax return for wagering taxes, as provided in subsection (a)(2) if the taxpayer is an individual or subsection (b)(3) if the taxpayer is a corporation:

(1) For taxable years beginning after December 31, 2018, and before January 1, 2020, a taxpayer is required to add back under this section eighty-seven and five-tenths percent (87.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(2) For taxable years beginning after December 31, 2019, and before January 1, 2021, a taxpayer is required to add back under this section seventy-five percent (75%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(3) For taxable years beginning after December 31, 2020, and before January 1, 2022, a taxpayer is required to add back under this section sixty-two and five-tenths percent (62.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(4) For taxable years beginning after December 31, 2021, and before January 1, 2023, a taxpayer is required to add back under this section fifty percent (50%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(5) For taxable years beginning after December 31, 2022, and before January 1, 2024, a taxpayer is required to add back under this section thirty-seven and five-tenths percent (37.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(6) For taxable years beginning after December 31, 2023, and before January 1, 2025, a taxpayer is required to add back under this section twenty-five percent (25%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(7) For taxable years beginning after December 31, 2024, and before January 1, 2026, a taxpayer is required to add back under this section twelve and five-tenths percent (12.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(8) For taxable years beginning after December 31, 2025, a taxpayer is not required to add back under this section any amount of a deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(d) In the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code (concerning charitable contributions).

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 832(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code (concerning foreign tax credits).

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding the sum of:

(A) twenty-five thousand dollars ($25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under

Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(8) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and

(B) included in the insurance company's taxable income under the Internal Revenue Code.

(9) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(10) Add an amount equal to any exempt insurance income under Section 953(e) of the Internal Revenue Code that is active financing income under Subpart F of Subtitle A, Chapter 1, Subchapter N of the Internal Revenue Code.

(11) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.

(12) For taxable years beginning after December 25, 2016, add:

(A) an amount equal to the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1; or

(B) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code.

(13) Add an amount equal to the deduction that was claimed by the taxpayer for the taxable year under Section 250(a)(1)(B) of the Internal Revenue Code (attributable to global intangible low-taxed income). The taxpayer shall separately specify the amount of the reduction under Section 250(a)(1)(B)(i) of the Internal Revenue Code and under Section 250(a)(1)(B)(ii) of the Internal Revenue Code.

(14) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(15) Subtract the amount that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code for taxable years ending after December 22, 2017.

(16) Add an amount equal to the remainder of:

(A) the amount allowable as a deduction under Section 274(n) of the Internal Revenue Code; minus

(B) the amount otherwise allowable as a deduction under Section 274(n) of the Internal Revenue Code, if Section 274(n)(2)(D) of the Internal Revenue Code was not in effect for amounts paid or incurred after December 31, 2020.

(17) For taxable years ending after March 12, 2020, subtract an amount equal to the deduction disallowed pursuant to:

(A) Section 2301(e) of the CARES Act (Public Law 116-136), as modified by Sections 206 and 207 of the Taxpayer Certainty and Disaster Relief Tax Act (Division EE of Public Law 116-260); and

(B) Section 3134(e) of the Internal Revenue Code.

(18) For taxable years beginning after December 31, 2022, subtract an amount equal to the deduction disallowed under Section 280C(h) of the Internal Revenue Code.

(19) Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;

under IC 6-3-2.

(e) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code (concerning charitable contributions).

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 832(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code (concerning foreign tax credits).

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding the sum of:

(A) twenty-five thousand dollars ($25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(8) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and

(B) included in the insurance company's taxable income under the Internal Revenue Code.

(9) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(10) Add an amount equal to any exempt insurance income under Section 953(e) of the Internal Revenue Code that is active financing income under Subpart F of Subtitle A, Chapter 1, Subchapter N of the Internal Revenue Code.

(11) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.

(12) For taxable years beginning after December 25, 2016, add:

(A) an amount equal to the amount reported by the taxpayer on

IRC 965 Transition Tax Statement, line 1; or

(B) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code.

(13) Add an amount equal to the deduction that was claimed by the taxpayer for the taxable year under Section 250(a)(1)(B) of the Internal Revenue Code (attributable to global intangible low-taxed income). The taxpayer shall separately specify the amount of the reduction under Section 250(a)(1)(B)(i) of the Internal Revenue Code and under Section 250(a)(1)(B)(ii) of the Internal Revenue Code.

(14) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(15) Subtract the amount that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code for taxable years ending after December 22, 2017.

(16) Add an amount equal to the remainder of:

(A) the amount allowable as a deduction under Section 274(n) of the Internal Revenue Code; minus

(B) the amount otherwise allowable as a deduction under Section 274(n) of the Internal Revenue Code, if Section 274(n)(2)(D) of the Internal Revenue Code was not in effect for amounts paid or incurred after December 31, 2020.

(17) For taxable years ending after March 12, 2020, subtract an amount equal to the deduction disallowed pursuant to:

(A) Section 2301(e) of the CARES Act (Public Law 116-136), as modified by Sections 206 and 207 of the Taxpayer Certainty and Disaster Relief Tax Act (Division EE of Public Law 116-260); and

(B) Section 3134(e) of the Internal Revenue Code.

(18) For taxable years beginning after December 31, 2022,

subtract an amount equal to the deduction disallowed under Section 280C(h) of the Internal Revenue Code.

(19) Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;

under IC 6-3-2.

(f) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.

(3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(4) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding the sum of:

(A) twenty-five thousand dollars ($25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(6) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and

(B) included in the taxpayer's taxable income under the Internal Revenue Code.

(7) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(8) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.

(9) For taxable years beginning after December 25, 2016, add an amount equal to:

(A) the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1;

(B) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's

taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code; and

(C) with regard to any amounts of income under Section 965 of the Internal Revenue Code distributed by the taxpayer, the deduction under Section 965(c) of the Internal Revenue Code attributable to such distributed amounts and not reported to the beneficiary.

For purposes of this article, the amount required to be added back under clause (B) is not considered to be distributed or distributable to a beneficiary of the estate or trust for purposes of Sections 651 and 661 of the Internal Revenue Code.

(10) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(11) Add an amount equal to the deduction for qualified business income that was claimed by the taxpayer for the taxable year under Section 199A of the Internal Revenue Code.

(12) Subtract the amount that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code for taxable years ending after December 22, 2017.

(13) Add an amount equal to the remainder of:

(A) the amount allowable as a deduction under Section 274(n) of the Internal Revenue Code; minus

(B) the amount otherwise allowable as a deduction under Section 274(n) of the Internal Revenue Code, if Section 274(n)(2)(D) of the Internal Revenue Code was not in effect for amounts paid or incurred after December 31, 2020.

(14) For taxable years beginning after December 31, 2017, and before January 1, 2021, add an amount equal to the excess business loss of the taxpayer as defined in Section 461(l)(3) of the Internal Revenue Code. In addition:

(A) If a taxpayer has an excess business loss under this subdivision and also has modifications under subdivisions (3)

and (5) for property placed in service during the taxable year, the taxpayer shall treat a portion of the taxable year modifications for that property as occurring in the taxable year the property is placed in service and a portion of the modifications as occurring in the immediately following taxable year.

(B) The portion of the modifications under subdivisions (3) and (5) for property placed in service during the taxable year treated as occurring in the taxable year in which the property is placed in service equals:

(i) the modification for the property otherwise determined under this section; minus

(ii) the excess business loss disallowed under this subdivision;

but not less than zero (0).

(C) The portion of the modifications under subdivisions (3) and (5) for property placed in service during the taxable year treated as occurring in the taxable year immediately following the taxable year in which the property is placed in service equals the modification for the property otherwise determined under this section minus the amount in clause (B).

(D) Any reallocation of modifications between taxable years under clauses (B) and (C) shall be first allocated to the modification under subdivision (3), then to the modification under subdivision (5).

(15) For taxable years ending after March 12, 2020, subtract an amount equal to the deduction disallowed pursuant to:

(A) Section 2301(e) of the CARES Act (Public Law 116-136), as modified by Sections 206 and 207 of the Taxpayer Certainty and Disaster Relief Tax Act (Division EE of Public Law 116-260); and

(B) Section 3134(e) of the Internal Revenue Code.

(16) For taxable years beginning after December 31, 2022, subtract an amount equal to the deduction disallowed under Section 280C(h) of the Internal Revenue Code.

**(17) Except as provided in subsection (c), for taxable years beginning after December 31, 2022, add an amount equal to any deduction or deductions allowed or allowable in determining taxable income under Section 641(b) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.**

~~(17)~~ **(18)** Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;

under IC 6-3-2.

**(g) For purposes of IC 6-3-2.1, IC 6-3-4-12, IC 6-3-4-13, and IC 6-3-4-15 for taxable years beginning after December 31, 2022, "adjusted gross income" of a pass through entity means the aggregate of items of ordinary income and loss in the case of a partnership or a corporation described in IC 6-3-2-2.8(2), or aggregate distributable net income of a trust or estate as defined in Section 643 of the Internal Revenue Code, whichever is applicable, for the taxable year modified as follows:**

**(1) Add the separately stated items of income and gains, or the equivalent items that must be considered separately by a beneficiary, as determined for federal purposes, attributed to the partners, shareholders, or beneficiaries of the pass through entity, determined without regard to whether the owner is permitted to exclude all or part of the income or gain or deduct any amount against the income or gain.**

**(2) Subtract the separately stated items of deductions or losses or items that must be considered separately by beneficiaries, as determined for federal purposes, attributed to partners, shareholders, or beneficiaries of the pass through entity and that are deductible by an individual in determining adjusted gross income as defined under Section 62 of the Internal Revenue Code:**

**(A) limited as if the partners, shareholders, and beneficiaries deducted the maximum allowable loss or deduction allowable for the taxable year prior to any amount deductible from the pass through entity; but**

**(B) not considering any disallowance of deductions resulting from federal basis limitations for the partner, shareholder, or beneficiary.**

**(3) Add or subtract any modifications to adjusted gross income that would be required both for individuals under subsection (a) and corporations under subsection (b) to the extent otherwise provided in those subsections, including amounts that are allowable for which such modifications are necessary to account for separately stated items in subdivision (1) or (2).**

~~(g)~~ **(h)** Subsections (a)(35), (b)(20), (d)(19), (e)(19), or ~~(f)(17)~~ **(f)(18)** may not be construed to require an add back or allow a

deduction or exemption more than once for a particular add back, deduction, or exemption.

~~(h)~~ **(i)** For taxable years beginning after December 25, 2016, if:

(1) a taxpayer is a shareholder, either directly or indirectly, in a corporation that is an E&P deficit foreign corporation as defined in Section 965(b)(3)(B) of the Internal Revenue Code, and the earnings and profit deficit, or a portion of the earnings and profit deficit, of the E&P deficit foreign corporation is permitted to reduce the federal adjusted gross income or federal taxable income of the taxpayer, the deficit, or the portion of the deficit, shall also reduce the amount taxable under this section to the extent permitted under the Internal Revenue Code, however, in no case shall this permit a reduction in the amount taxable under Section 965 of the Internal Revenue Code for purposes of this section to be less than zero (0); and

(2) the Internal Revenue Service issues guidance that such an income or deduction is not reported directly on a federal tax return or is to be reported in a manner different than specified in this section, this section shall be construed as if federal adjusted gross income or federal taxable income included the income or deduction.

~~(i)~~ **(j)** If a partner is required to include an item of income, a deduction, or another tax attribute in the partner's adjusted gross income tax return pursuant to IC 6-3-4.5, such item shall be considered to be includible in the partner's federal adjusted gross income or federal taxable income, regardless of whether such item is actually required to be reported by the partner for federal income tax purposes. For purposes of this subsection:

(1) items for which a valid election is made under IC 6-3-4.5-6, IC 6-3-4.5-8, or IC 6-3-4.5-9 shall not be required to be included in the partner's adjusted gross income or taxable income; and

(2) items for which the partnership did not make an election under IC 6-3-4.5-6, IC 6-3-4.5-8, or IC 6-3-4.5-9, but for which the partnership is required to remit tax pursuant to IC 6-3-4.5-18, shall be included in the partner's adjusted gross income or taxable income.

SECTION 2. IC 6-3-2-2.5, AS AMENDED BY P.L.137-2022, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 2.5. (a) This section applies to a resident person.

(b) Resident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed

the taxpayer's unused Indiana net operating losses carried over to that year. A taxpayer is not entitled to carryback any net operating losses after December 31, 2011.

(c) An Indiana net operating loss equals the sum of:

(1) the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, adjusted for certain modifications required by IC 6-3-1-3.5 as set forth in subsection (d)(1) and, in the case of an individual, reduced by any deductions allowable in determining the federal net operating loss for the taxable year, but not allowable in determining federal adjusted gross income;

(2) the excess business loss deduction disallowed under IC 6-3-1-3.5(a)(29) and IC 6-3-1-3.5(f)(14); and

(3) for taxable years beginning after December 31, 2020, a loss for a taxable year disallowed because of Section 461(l) of the Internal Revenue Code, without any modifications under subsection (d).

(d) The following provisions apply for purposes of subsection (c):

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred, except that the modifications do not include the modifications required under:

(A) IC 6-3-1-3.5(a)(3);

(B) IC 6-3-1-3.5(a)(4);

(C) IC 6-3-1-3.5(a)(5);

(D) IC 6-3-1-3.5(a)(35);

(E) IC 6-3-1-3.5(f)(11); and

(F) ~~IC 6-3-1-3.5(f)(17).~~ **IC 6-3-1-3.5(f)(18).**

(2) An Indiana net operating loss includes a net operating loss that arises when the applicable modifications required by IC 6-3-1-3.5 as set forth in subdivision (1) exceed the sum of the taxpayer's federal adjusted gross income (as defined in Section 62 of the Internal Revenue Code) if the taxpayer is an individual, or federal taxable income (as defined in Section 63 of the Internal Revenue Code) if the taxpayer is a trust or an estate for the taxable year in which the Indiana net operating loss is determined and the modifications otherwise required for federal net operating losses for the taxable year by Section 172(d) of the Internal Revenue Code. A modification that reduces a federal net operating loss shall be treated as a positive number for purposes of this subdivision, and a modification that increases a federal net operating loss shall be treated as a negative number for purposes

of this subdivision.

(e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryover shall be available as a deduction from the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in the carryover year provided in subsection (f), but not in excess of the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in the carryover year determined without regard to this section.

(f) Carryovers shall be determined under this subsection as follows:

(1) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.

(2) An Indiana net operating loss may not be carried over for more than twenty (20) taxable years after the taxable year of the loss.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried over as provided in subsection (f). The amount of the Indiana net operating loss carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

(1) The entire amount of the Indiana net operating loss has been used as a deduction.

(2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

SECTION 3. IC 6-3-2-2.6, AS AMENDED BY P.L.137-2022, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person.

(b) Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried over to that year. A taxpayer is not entitled to carryback any net operating losses after December 31, 2011.

(c) An Indiana net operating loss equals the sum of:

(1) the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for certain modifications required by IC 6-3-1-3.5 as set forth in subsection

(d)(1) and, for a nonresident individual, reduced by any deductions from Indiana sources allowable in determining the federal net operating loss for the taxable year, but not allowable in determining federal adjusted gross income;

(2) the excess business loss deduction disallowed under IC 6-3-1-3.5(a)(29) and IC 6-3-1-3.5(f)(14) and incurred from Indiana sources; and

(3) for taxable years beginning after December 31, 2020, the portion of the loss for a taxable year disallowed because of Section 461(l) of the Internal Revenue Code and incurred from Indiana sources, without any modifications under subsection (d). Any net operating loss under this subdivision shall be computed in a manner consistent with the computation of adjusted gross income under IC 6-3.

(d) The following provisions apply for purposes of subsection (c):

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred, except that the modifications do not include the modifications required under:

(A) IC 6-3-1-3.5(a)(3);
(B) IC 6-3-1-3.5(a)(4);
(C) IC 6-3-1-3.5(a)(5);
(D) IC 6-3-1-3.5(a)(35);
(E) IC 6-3-1-3.5(b)(14);
(F) IC 6-3-1-3.5(b)(20);
(G) IC 6-3-1-3.5(d)(13);
(H) IC 6-3-1-3.5(d)(19);
(I) IC 6-3-1-3.5(e)(13);
(J) IC 6-3-1-3.5(e)(19);
(K) IC 6-3-1-3.5(f)(11); and
(L) ~~IC 6-3-1-3.5(f)(17).~~ **IC 6-3-1-3.5(f)(18).**

(2) The amount of the taxpayer's net operating loss that is derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's adjusted gross income derived from sources within Indiana is determined under section 2 of this chapter for the same taxable year during which each loss was incurred.

(3) An Indiana net operating loss includes a net operating loss that arises when the applicable modifications required by IC 6-3-1-3.5 as set forth in subdivision (1) exceed the sum of:

(A) either:

(i) the taxpayer's federal taxable income (as defined in

Section 63 of the Internal Revenue Code), if the taxpayer is a corporation, nonresident estate, or nonresident trust; or

(ii) the taxpayer's federal adjusted gross income (as defined by Section 62 of the Internal Revenue Code), if the taxpayer is a nonresident individual;

for the taxable year in which the Indiana net operating loss is determined; and

(B) the modifications otherwise required for federal net operating losses for the taxable year of the Indiana net operating loss under Section 172(d) of the Internal Revenue Code or Section 512(b) of the Internal Revenue Code. A modification that reduces a federal net operating loss shall be treated as a positive number for purposes of this subdivision, and a modification that increases a federal net operating loss shall be treated as a negative number for purposes of this subdivision.

(e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryover shall be available as a deduction from the taxpayer's adjusted gross income derived from sources within Indiana (as defined in section 2 of this chapter) in the carryover year provided in subsection (f), but not in excess of the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in the carryover year determined without regard to the deduction allowable under this section.

(f) Carryovers shall be determined under this subsection as follows:

(1) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.

(2) An Indiana net operating loss may not be carried over for more than twenty (20) taxable years after the taxable year of the loss.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried over as provided in subsection (f). The amount of the Indiana net operating loss carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

(1) The entire amount of the Indiana net operating loss has been used as a deduction.

(2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

(h) An Indiana net operating loss deduction determined under this section shall be allowed notwithstanding the fact that in the year the taxpayer incurred the net operating loss the taxpayer was not subject to the tax imposed under section 1 of this chapter because the taxpayer was:

(1) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or

(2) an insurance company subject to tax under Section 831 of the Internal Revenue Code.

(i) In the case of a life insurance company, this section shall be applied by substituting life insurance company taxable income (as defined in Section 801 the Internal Revenue Code) in place of references to taxable income (as defined in Section 63 of the Internal Revenue Code).

SECTION 4. IC 6-3-2-2.8, AS AMENDED BY P.L.129-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 2.8. Notwithstanding any provision of IC 6-3-1 through IC 6-3-7, there shall be no tax on the adjusted gross income of the following:

(1) Any organization described in Section 501(a) of the Internal Revenue Code, except that any income of such organization which is subject to income tax under the Internal Revenue Code shall be subject to the tax under IC 6-3-1 through IC 6-3-7.

(2) Any corporation which is exempt from income tax under Section 1363 of the Internal Revenue Code and which complies with the requirements of IC 6-3-4-13. However, income of a corporation described under this subdivision that is subject to income tax under the Internal Revenue Code is subject to the tax under IC 6-3-1 through IC 6-3-7. A corporation will not lose its exemption under this section because it fails to comply with IC 6-3-4-13 but it will be subject to the penalties provided by IC 6-8.1-10. **Any corporation that is exempt from income tax under Section 1363 of the Internal Revenue Code and that makes an election under IC 6-3-2.1 for a taxable year shall be subject to tax as provided in IC 6-3-2.1 for the taxable year of the election.**

(3) Banks and trust companies, national banking associations, savings banks, building and loan associations, and savings and loan associations.

(4) Insurance companies subject to tax under any of the following:

(A) IC 27-1-18-2, including a domestic insurance company that elects to be taxed under IC 27-1-18-2.

(B) IC 27-1-2-2.3.

(5) International banking facilities (as defined in Regulation D of the Board of Governors of the Federal Reserve System (12 CFR 204)).

SECTION 5. IC 6-3-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]:

**Chapter 2.1. Pass Through Entity Tax**

**Sec. 1. This chapter applies to taxable years beginning after December 31, 2021.**

**Sec. 2. The following definitions apply throughout this chapter:**

**(1) "Electing entity" means a pass through entity described in IC 6-3-1-35 that is subject to Subchapter K or Subchapter S of the Internal Revenue Code and makes the election under this chapter.**

**(2) "Entity owner" means the direct or indirect owners of an electing entity that are ultimately taxable on the entity's income under Subchapter K or Subchapter S of the Internal Revenue Code, except an owner described in subdivision (4)(A) through (4)(C).**

**(3) "Nonresident" means a nonresident partner as defined by IC 6-3-4-12(n), a nonresident shareholder as defined by IC 6-3-4-13(n), or a nonresident beneficiary as defined by IC 6-3-4-15(i), whichever is applicable.**

**(4) "Owner" means a direct or indirect owner of an electing entity and includes a beneficiary of an estate or trust. However an owner shall not include:**

**(A) an entity described in IC 6-3-2-2.8(3);**

**(B) an entity described in IC 6-3-2-2.8(5); or**

**(C) any other entity as determined by the department and listed in instructions or guidance issued by the department.**

**Sec. 3. (a) For purposes of this section, "authorized person" means any individual with the authority from the electing entity to bind the electing entity or sign returns on its behalf.**

**(b) Each taxable year, an authorized person may elect, on behalf of the electing entity, to have the adjusted gross income tax under IC 6-3-1 through IC 6-3-7 imposed upon the electing entity. The entity owners shall remain liable for adjusted gross income tax under IC 6-3-1 through IC 6-3-7 on their share of the electing entity's adjusted gross income but with the credit provided to the**

**entity owners as set forth in section 5 of this chapter.**

**(c) The election is applicable for the taxable year of the return.**

**(d) The following apply to an election under this section:**

**(1) For taxable years beginning after December 31, 2022, the election may be made at any time during the taxable year or after the end of the taxable year, but not later than the earlier of:**

**(A) the due date of the electing entity's return for the taxable year, including any extensions; or**

**(B) the date the electing entity files its return for the taxable year.**

**(2) For taxable years beginning after December 31, 2021, and before January 1, 2023, the election must be made after March 31, 2023, and before August 31, 2024.**

**(3) The election shall be made in the form and manner prescribed by the department.**

**(4) The election, once made for a taxable year, is irrevocable, provided that an election under subdivision (2) may be made on an amended return if the electing entity filed a return on or before April 18, 2023.**

**Sec. 4. (a) A tax shall be imposed on the adjusted gross income of an electing entity for the taxable year of the election. The adjusted gross income of the electing entity shall be the aggregate of the direct owners' share of the electing entity's adjusted gross income. For purposes of this section:**

**(1) the electing entity shall determine each nonresident direct owner's share after allocation and apportionment pursuant to IC 6-3-2-2; and**

**(2) the electing entity shall determine the resident direct owner's share either before allocation and apportionment pursuant to IC 6-3-2-2 or after allocation and apportionment pursuant to IC 6-3-2-2. The electing entity must use the same method for all resident direct owners.**

**(b) The tax rate shall be the tax rate specified in IC 6-3-2-1(b) as of the last day of the electing entity's taxable year, and the tax shall be due on the same date as the entity return for the taxable year is due under this article, without regard to extensions.**

**(c) On its return for the taxable year, the electing entity shall attach a schedule showing the calculation of the tax and the credit for each entity owner, and remit the tax with the return, taking into account prior estimated tax payments and other tax payments by the electing entity, along with other payments that are credited**

**to the electing entity as tax paid under this chapter or as tax withheld under IC 6-3-4 or IC 6-5.5-2-8. The department may prescribe the form for providing the information required by this section.**

**(d) If a pass through entity makes estimated tax payments, makes other tax payments, or has other payments that are credited to the electing entity as tax paid under this chapter or a tax withheld under IC 6-3-4 or IC 6-5.5-2-8, and the pass through entity does not make the election under section 3 of this chapter, the pass through entity:**

**(1) may treat pass through entity tax remitted on its behalf under this chapter as pass through entity tax to its direct owners, provided that:**

**(A) the tax is designated on a schedule similar to the schedule required under subsection (c) and is reported to the direct owners in the manner provided in section 5 of this chapter; and**

**(B) the pass through entity credits an amount to a direct owner no greater than the tax that otherwise would be due under this chapter on their share of the adjusted gross income from the pass through entity or the direct owner's portion (as determined under subsection (a)) of the pass through entity tax passed through to the pass through entity, whichever is greater (for purposes of this clause, a trust or estate shall compute the tax in the same manner as an electing entity);**

**(2) shall treat any payment other than a payment designated under subdivision (1) as a withholding tax payment under IC 6-3-4-12, IC 6-3-4-13, IC 6-3-4-15, or IC 6-5.5-2-8 to the extent the pass through entity otherwise has not remitted or been credited with such withholding; and**

**(3) may request a refund of any payment in excess of the amounts credited or designated under subdivision (1) or (2).**

**Sec. 5. (a) Each electing entity shall compute each direct owner's share of the tax imposed by section 4 of this chapter and reflect that amount in the form and manner prescribed by the department.**

**(b) Each entity owner shall be entitled to a refundable credit in an amount equal to the amount of tax under this chapter credited to the entity owner.**

**(c) All other credits arising from the operations of the electing entity, or which are passed through to or assigned to the electing**

**entity, shall pass through to the entity owners as provided in this article or IC 6-3.1 and shall not apply to the tax imposed in section 4 of this chapter. All such other credits shall apply before the application of the pass through entity tax credit. This subsection also applies to pass through entities that pass the tax under this chapter through to their owners. However, this subsection shall not limit the ability of an electing entity or pass through entity to claim credit for taxes withheld or paid on the entity's behalf.**

**Sec. 6. (a) Except as otherwise provided in this section, an electing entity shall be subject to the obligation to make estimated tax payments under this article for the tax imposed under section 4 of this chapter in the same manner as applicable to corporations under IC 6-3-4-4.1(c).**

**(b) For taxable years ending on or before June 30, 2023, an electing entity is not required to make estimated tax payments.**

**(c) For taxable years ending after June 30, 2023, and on or before December 31, 2024, an electing entity shall make an estimated tax payment for the taxable years on or before the end of the taxable year. There shall be no penalty for underpayment of estimated tax, except to the extent the underpayment fails to equal or exceed fifty percent (50%) of the tax imposed by section 4 of this chapter for the taxable year.**

**(d) For taxable years ending after December 31, 2024, there shall be no penalty for underpayment of estimated tax, except to the extent the payments during the taxable year fail to equal or exceed the lesser of eighty percent (80%) of the tax imposed under this chapter for the taxable year or one hundred percent (100%) of the tax imposed under this chapter for the preceding taxable year.**

**(e) In the event of an underpayment under subsection (c) or (d), the electing entity shall be subject to a penalty in the amount prescribed under IC 6-8.1-10-2.1(b) on the amount of the underpayment.**

**Sec. 7. (a) This section applies if:**

**(1) the department determines that an electing entity underreported its tax under this chapter;**

**(2) an electing entity files an amended return reporting an underpayment of tax under this chapter; or**

**(3) the Internal Revenue Service adjusts the adjusted gross income of an electing entity.**

**(b) If a partnership is an electing entity, the partnership shall be subject to IC 6-3-4.5 on any assessment and reporting of changes.**

**(c) If a corporation described in IC 6-3-2-2.8(2) is an electing entity, the corporation and its shareholders shall be subject to the provisions of IC 6-3-4.5 in the same manner as a partnership and its partners with regard to the tax imposed under this chapter, except that any change in attributes is treated as occurring in the year to which the change relates unless required by the Internal Revenue Code.**

SECTION 6. IC 6-3-3-3, AS AMENDED BY P.L.159-2021, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: Sec. 3. (a) Whenever a resident person has become liable for tax to another state upon all or any part of the person's income for a taxable year derived from sources without this state and subject to taxation under IC 6-3-2, the amount of tax paid by the person to the other state shall be credited against the amount of the tax payable by the person. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment, except that such application for credit shall not operate to reduce the tax payable under IC 6-3-2 to an amount less than would have been payable were the income from the other state ignored. The credit provided for by this subsection shall not be granted to a taxpayer when the laws of the other state, under which the adjusted gross income in question is subject to taxation, provides for a credit to the taxpayer substantially similar to that granted by subsection (b).

(b) Whenever a nonresident person has become liable for tax to the state where the person resides upon the person's income for the taxable year derived from sources within this state and subject to taxation under IC 6-3-2, the proportion of tax paid by the person to the state where the person resides that the person's income subject to taxation under IC 6-3-2 bears to the person's income upon which the tax so payable to the other state was imposed shall be credited against the tax payable by the person under IC 6-3-2, but only if the laws of the other state grant a substantially similar credit to residents of this state subject to income tax under the laws of such other state, or impose a tax upon the income of its residents derived from sources in this state and exempt from taxation the income of residents of this state. No credit shall be allowed against the amount of the tax on any adjusted gross income taxable under IC 6-3-2 that is exempt from taxation under the laws of the other state.

(c) Notwithstanding subsection (a), if a resident person will be liable for income tax to a foreign country upon the person's income included under the Internal Revenue Code, the income is considered from sources outside the United States under the Internal Revenue Code, and

the income is included in the person's Indiana adjusted gross income due solely to an acceleration of the income inclusion for federal income tax purposes, the person may claim the credit allowable under this section by providing evidence to the department of the following:

(1) The foreign country in which the income is subject to tax.

(2) The amount of income included in Indiana adjusted gross income that is derived from the foreign country.

(3) The amount of tax that will be imposed in the foreign country upon the individual's realization of the income under the laws of the foreign country, including any withholding tax or composite tax.

(4) Any other information required by the department.

The department may impose limitations and conditions on the claim under this subsection, including reporting requirements on the part of the person and extensions of statutes of limitations under IC 6-8.1-5-2.

**(d) As used in this subsection, "pass through entity tax" means a state net income tax imposed by another state on a pass through entity enacted by the state after 2017 that is substantially similar to that imposed under IC 6-3-2.1. Solely for purposes of this section, an owner of a pass through entity shall be considered liable for tax paid to another state by the pass through entity pursuant to a pass through entity tax imposed by the state (whether elected or otherwise) in an amount equal to that portion of the pass through entity tax representing the pass through entity tax credited to or otherwise attributed to the owner by the pass through entity, and the owner shall be considered to have paid that portion of the tax paid by the pass through entity. The owner of a pass through entity shall also be considered liable for and to have paid state income taxes to another state paid by the pass through entity on behalf of an owner through withholding, a composite return, or otherwise.**

SECTION 7. IC 6-3-4-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 11. (a) A partnership as such shall not be subject to the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7, **except to the extent the partnership is an electing entity (as defined in IC 6-3-2.1-2) or the partnership has made an election to be taxed at the partnership level under IC 6-3-4.5.** Persons or corporations carrying on business as partners shall be liable for the adjusted gross income tax only in their separate or individual capacities. In determining each partner's adjusted gross income, such partner shall take into account his or its distributive share of the adjustments provided for in IC 6-3-1-3.5.

(b) The adjustments provided for in IC 6-3-1-3.5 shall be allowed

for the taxable year of the partner within or with which the partnership's taxable year ends.

SECTION 8. IC 6-3-4-12, AS AMENDED BY P.L.137-2022, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 12. (a) Every partnership shall, at the time that the partnership pays or credits amounts to any of its nonresident partners on account of their distributive shares of partnership income, for a taxable year of the partnership, deduct and retain therefrom the amount prescribed in the withholding instructions referred to in section 8 of this chapter. Such partnership so paying or crediting any nonresident partner:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and retained under this section and shall not be liable to such partner for the amount deducted from such payment or credit and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly whenever the amount of tax due under IC 6-3 and IC 6-3.6 exceeds an aggregate amount of fifty dollars ($50) per month with such payment due on the thirtieth day of the following month, unless an earlier date is specified by section 8.1 of this chapter.

Where the aggregate amount due under IC 6-3 and IC 6-3.6 does not exceed fifty dollars ($50) per month, then such partnership shall make return and payment to the department quarterly, on such dates and in such manner as the department shall prescribe, of the amount of tax which, under IC 6-3 and IC 6-3.6, it is required to withhold. **If a partnership credits a partner with pass through entity tax imposed under IC 6-3-2.1, the withholding required for that partner under this section shall be reduced by the tax credited to the partner under IC 6-3-2.1, but in no event shall the tax required to be withheld be reduced to less than zero dollars ($0).**

(b) Every partnership shall, at the time of each payment made by it to the department pursuant to this section, deliver to the department a return upon such form as shall be prescribed by the department showing the total amounts paid or credited to its nonresident partners, the amount deducted therefrom in accordance with the provisions of this section, and such other information as the department may require. Every partnership making the deduction and retention provided in this section shall furnish to its nonresident partners annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax deducted and retained from such partners on forms to be prescribed by the department.

(c) All money deducted and retained by the partnership, as provided in this section, shall immediately upon such deduction be the money of the state of Indiana and every partnership which deducts and retains any amount of money under the provisions of IC 6-3 shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in IC 6-3. Any partnership may be required to post a surety bond in such sum as the department shall determine to be appropriate to protect the state of Indiana with respect to money deducted and retained pursuant to this section.

(d) The provisions of IC 6-8.1 relating to additions to tax in case of delinquency and penalties shall apply to partnerships subject to the provisions of this section, and for these purposes any amount deducted, or required to be deducted and remitted to the department under this section, shall be considered to be the tax of the partnership, and with respect to such amount it shall be considered the taxpayer.

(e) Amounts deducted from payments or credits to a nonresident partner during any taxable year of the partnership in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such nonresident partner for the nonresident partner's taxable year within or with which the partnership's taxable year ends. A return made by the partnership under subsection (b) shall be accepted by the department as evidence in favor of the nonresident partner of the amount so deducted for the nonresident partner's distributive share.

(f) This section shall in no way relieve any nonresident partner from the nonresident partner's obligations of filing a return or returns at the time required under IC 6-3 or IC 6-3.6, and any unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(g) Instead of the reporting periods required under subsection (a), the department may permit a partnership to file one (1) return and payment each year if the partnership pays or credits amounts to its nonresident partners only one (1) time each year. The return and payment are due on or before the fifteenth day of the fourth month after the end of the year. However, if a partnership is permitted an extension to file its income tax return under IC 6-8.1-6-1, the return and payment due under this subsection shall be allowed the same treatment as an extended income tax return with respect to due dates, interest, and penalties under IC 6-8.1-6-1.

(h) If a partnership fails to withhold and pay any amount of tax required to be withheld under this section and thereafter the tax is paid by the partners, the amounts of tax as paid by the partners shall not be

collected from the partnership but it may not be relieved from liability for interest or penalty otherwise due in respect to the failure to withhold under IC 6-8.1-10.

(i) A partnership shall file a composite adjusted gross income tax return on behalf of all nonresident partners. The composite return must include each nonresident partner regardless of whether or not the nonresident partner has other Indiana source income.

(j) If a partnership does not include all nonresident partners in the composite return, the partnership is subject to the penalty imposed under IC 6-8.1-10-2.1(j).

(k) For taxable years beginning after December 31, 2013, the department may not impose a late payment penalty on a partnership for the failure to file a return, pay the full amount of the tax shown on the partnership's return, or pay the deficiency of the withholding taxes due under this section if the partnership pays the department before the fifteenth day of the fourth month after the end of the partnership's taxable year at least:

(1) eighty percent (80%) of the withholding tax due for the current year; or

(2) one hundred percent (100%) of the withholding tax due for the preceding year.

(l) Notwithstanding subsection (a) or (i), a partnership is not required to withhold tax or file a composite adjusted gross income tax return for a nonresident partner if the partnership:

(1) is a publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code;

(2) meets the exception for partnerships under Section 7704(c) of the Internal Revenue Code; and

(3) has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the department of each unit holder.

The department may issue written guidance explaining circumstances under which limited partnerships or limited liability companies owned by a publicly traded partnership may be excluded from the withholding requirements of this section.

(m) Notwithstanding subsection (k), a partnership is subject to a late payment penalty for the failure to file a return, pay the full amount of the tax shown on the partnership's return, or pay the deficiency of the withholding taxes due under this section for any amounts of withholding tax, including any interest under IC 6-8.1-10-1, reported or paid after the due date of the return, as adjusted by any extension under IC 6-8.1-6-1.

(n) For purposes of this section, a "nonresident partner" is:

(1) an individual who does not reside in Indiana;

(2) a trust that does not reside in Indiana;

(3) an estate that does not reside in Indiana;

(4) a partnership not domiciled in Indiana;

(5) a C corporation not domiciled in Indiana; or

(6) an S corporation not domiciled in Indiana.

SECTION 9. IC 6-3-4-13, AS AMENDED BY P.L.197-2016, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 13. (a) Every corporation which is exempt from tax under IC 6-3 pursuant to IC 6-3-2-2.8(2) shall, at the time that it pays or credits amounts to any of its nonresident shareholders as dividends or as their share of the corporation's undistributed taxable income, withhold the amount prescribed by the department. Such corporation so paying or crediting any nonresident shareholder:

(1) shall be liable to the state of Indiana for the payment of the tax required to be withheld under this section and shall not be liable to such shareholder for the amount withheld and paid over in compliance or intended compliance with this section; and

(2) when the aggregate amount due under IC 6-3 and IC 6-3.6 exceeds one hundred fifty dollars ($150) per quarter, then such corporation shall make return and payment to the department quarterly, on such dates and in such manner as the department shall prescribe, of the amount of tax which, under IC 6-3 and IC 6-3.6, it is required to withhold.

**If a corporation credits a shareholder with pass through entity tax imposed under IC 6-3-2.1, the withholding required for that shareholder under this section shall be reduced by the tax credited to the shareholder under IC 6-3-2.1, but in no event shall the tax required to be withheld be reduced to less than zero dollars ($0).**

(b) Every corporation shall, at the time of each payment made by it to the department pursuant to this section, deliver to the department a return upon such form as shall be prescribed by the department showing the total amounts paid or credited to its nonresident shareholders, the amount withheld in accordance with the provisions of this section, and such other information as the department may require. Every corporation withholding as provided in this section shall furnish to its nonresident shareholders annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such shareholders on forms to be prescribed by the department.

(c) All money withheld by a corporation, pursuant to this section, shall immediately upon being withheld be the money of the state of Indiana and every corporation which withholds any amount of money under the provisions of this section shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in IC 6-3. Any corporation may be required to post a surety bond in such sum as the department shall determine to be appropriate to protect the state of Indiana with respect to money withheld pursuant to this section.

(d) The provisions of IC 6-8.1 relating to additions to tax in case of delinquency and penalties shall apply to corporations subject to the provisions of this section, and for these purposes any amount withheld, or required to be withheld and remitted to the department under this section, shall be considered to be the tax of the corporation, and with respect to such amount it shall be considered the taxpayer.

(e) Amounts withheld from payments or credits to a nonresident shareholder during any taxable year of the corporation in accordance with the provisions of this section shall be considered to be a part payment of the tax imposed on such nonresident shareholder for the shareholder's taxable year within or with which the corporation's taxable year ends. A return made by the corporation under subsection (b) shall be accepted by the department as evidence in favor of the nonresident shareholder of the amount so withheld from the shareholder's distributive share.

(f) This section shall in no way relieve any nonresident shareholder from the shareholder's obligation of filing a return or returns at the time required under IC 6-3 or IC 6-3.6, and any unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(g) Instead of the reporting periods required under subsection (a), the department may permit a corporation to file one (1) return and payment each year if the corporation pays or credits amounts to its nonresident shareholders only one (1) time each year. The withholding return and payment are due on or before the fifteenth day of the fourth month after the end of the taxable year of the corporation. However, if a corporation is permitted an extension to file its income tax return under IC 6-8.1-6-1, the return and payment due under this subsection shall be allowed the same treatment as the extended income tax return with respect to the due dates, interest, and penalties under IC 6-8.1-6-1.

(h) If a distribution will be made with property other than money or a gain is realized without the payment of money, the corporation shall not release the property or credit the gain until it has funds sufficient to enable it to pay the tax required to be withheld under this section. If

necessary, the corporation shall obtain such funds from the shareholders.

(i) If a corporation fails to withhold and pay any amount of tax required to be withheld under this section and thereafter the tax is paid by the shareholders, such amount of tax as paid by the shareholders shall not be collected from the corporation but it shall not be relieved from liability for interest or penalty otherwise due in respect to such failure to withhold under IC 6-8.1-10.

(j) A corporation described in subsection (a) shall file a composite adjusted gross income tax return on behalf of all nonresident shareholders. The composite return must include each nonresident shareholder regardless of whether or not the nonresident shareholder has other Indiana source income.

(k) If a corporation described in subsection (a) does not include all nonresident shareholders in the composite return, the corporation is subject to the penalty imposed under IC 6-8.1-10-2.1(j).

(l) For taxable years beginning after December 31, 2013, the department may not impose a late payment penalty on a corporation for the failure to file a return, pay the full amount of the tax shown on the corporation's return, or pay the deficiency of the withholding taxes due under this section if the corporation pays the department before the fifteenth day of the fourth month after the end of the partnership's taxable year at least:

(1) eighty percent (80%) of the withholding tax due for the current year; or

(2) one hundred percent (100%) of the withholding tax due for the preceding year.

(m) Notwithstanding subsection (l), a corporation is subject to a late payment penalty for the failure to file a return, pay the full amount of the tax shown on the corporation's return, or pay the deficiency of the withholding taxes due under this section for any amounts of withholding tax, including any interest under IC 6-8.1-10-1, reported or paid after the due date of the return, as adjusted by any extension under IC 6-8.1-6-1.

(n) For purposes of this section, a "nonresident shareholder" is:

(1) an individual who does not reside in Indiana;

(2) a trust that does not reside in Indiana; or

(3) an estate that does not reside in Indiana.

SECTION 10. IC 6-3-4-15, AS AMENDED BY P.L.181-2016, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 15. (a) A trust or estate shall, at the time that it distributes income (except income attributable

to interest or dividends) to a nonresident beneficiary, deduct and retain therefrom the amount prescribed in the withholding instructions referred to in section 8 of this chapter. The trust or estate so distributing income to a nonresident beneficiary:

(1) is liable to this state for the tax which it is required to deduct and retain under this section and is not liable to the beneficiary for the amount deducted from the distribution and paid to the department in compliance, or intended compliance, with this section; and

(2) shall pay the amount deducted to the department before the thirtieth day of the month following the distribution, unless an earlier date is specified by section 8.1 of this chapter.

**If a trust or estate credits a beneficiary with pass through entity tax imposed under IC 6-3-2.1, the withholding required for that beneficiary under this section shall be reduced by the tax credited to the beneficiary under IC 6-3-2.1, but in no event shall the tax required to be withheld be reduced to less than zero dollars ($0).**

(b) A trust or estate shall, at the time that it makes a payment to the department under this section, deliver to the department a return which shows the total amounts distributed to the trust's or estate's nonresident beneficiaries, the amount deducted from the distributions under this section, and any other information required by the department. The trust or estate shall file the return on the form prescribed by the department. A trust or estate which makes the deduction and retention required by this section shall furnish to its nonresident beneficiaries annually, but not later than thirty (30) days after the end of the trust's or estate's taxable year, a record of the amount of tax deducted and retained from the beneficiaries. The trust or estate shall furnish the information on the form prescribed by the department.

(c) The money deducted and retained by a trust or estate under this section is money of this state. Every trust or estate which deducts and retains any money under this section shall hold the money in trust for this state until it pays the money to the department in the manner and at the time provided in this section. The department may require a trust or estate to post a surety bond to protect this state with respect to money deducted and retained by the trust or estate under this section. The department shall determine the amount of the surety bond.

(d) The provisions of IC 6-8.1 relating to penalties or to additions to tax in case of a delinquency apply to trusts and estates which are subject to this section. For purposes of this subsection, any amount deducted, or required to be deducted and remitted to the department, under this section is considered the tax of the trust or estate, and with

respect to that amount, it is considered the taxpayer.

(e) Amounts deducted from distributions to nonresident beneficiaries under this section during a taxable year of the trust or estate are considered a partial payment of the tax imposed on the nonresident beneficiary for his taxable year within or with which the trust's or estate's taxable year ends. The department shall accept a return made by the trust or estate under subsection (b) as evidence of the amount of tax deducted from the income distributed to a nonresident beneficiary.

(f) This section does not relieve a nonresident beneficiary of his duty to file a return at the time required under IC 6-3. The nonresident beneficiary shall pay any unpaid tax at the time prescribed by section 5 of this chapter.

(g) If a trust or estate fails to withhold and pay any amount of tax required to be withheld under this section and thereafter the tax is paid by the beneficiaries, the amount of tax paid by the beneficiaries may not be collected from the trust or estate but it may not be relieved from liability for interest or penalty otherwise due in respect to the failure to withhold under IC 6-8.1-10.

(h) A trust or estate shall file a composite adjusted gross income tax return on behalf of all nonresident beneficiaries. The composite return must include each nonresident beneficiary regardless of whether the nonresident beneficiary has other Indiana source income.

(i) For purposes of this section, a "nonresident beneficiary" is:

(1) an individual who does not reside in Indiana;

(2) a trust that does not reside in Indiana;

(3) an estate that does not reside in Indiana;

(4) a partnership that is not domiciled in Indiana;

(5) a C corporation that is not domiciled in Indiana; or

(6) an S corporation that is not domiciled in Indiana.

(j) If a trust or estate is permitted an extension to file its income tax return under IC 6-8.1-6-1, then the return and payment due under this subsection shall be allowed the same treatment as the extended income tax return with respect to due dates, interest, and penalties under IC 6-8.1-6-1.

SECTION 11. IC 6-3-4.5-1, AS AMENDED BY P.L.178-2022(ts), SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 1. The following definitions apply throughout this chapter:

(1) "Adjustment year" means the partnership taxable year described in Section 6225(d)(2) of the Internal Revenue Code.

(2) "Administrative adjustment request" means an administrative

adjustment request filed by a partnership under Section 6227 of the Internal Revenue Code.

(3) "Affected year" means any taxable year for a taxpayer that is affected by an adjustment under this chapter, regardless of whether the partnership has received an adjustment for that taxable year.

(4) "Audited partnership" means a partnership subject to a partnership level audit resulting in a federal adjustment.

(5) "Corporate partner" means a partner that is subject to the state adjusted gross income tax under IC 6-3-2-1(c) or the financial institutions tax under IC 6-5.5-2-1. In the case of a partner that is a corporation described in IC 6-3-2-2.8(2) that also is subject to tax under IC 6-3-2-1(c), the corporation is a corporate partner only to the extent that its income is subject to tax under IC 6-3-2-1(c).

(6) "Direct partner" means a partner that holds an interest directly in a partnership or pass through entity.

(7) "Exempt partner" means a partner that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(1) or the financial institutions tax under IC 6-5.5-2-7(4), except to the extent of unrelated business taxable income.

(8) "Federal adjustment" means a change to an item or amount determined under the Internal Revenue Code or a change to any other tax attribute that is used by a taxpayer to compute state adjusted gross income taxes or financial institutions tax owed, whether that change results from action by the Internal Revenue Service, including a partnership level audit, or the filing of an amended federal return, a federal refund claim, or an administrative adjustment request by the taxpayer. A federal adjustment is positive to the extent that it increases state adjusted gross income as determined under IC 6-3 or IC 6-5.5 and is negative to the extent that it decreases state adjusted gross income as determined under IC 6-3 or IC 6-5.5.

(9) "Federal adjustment reports" includes methods or forms required by the department for use by a taxpayer to report final federal adjustments for purposes of this chapter, including an amended Indiana tax return, information return, or uniform multistate report.

(10) "Federal partnership representative" means a person the partnership designates for the taxable year as the partnership's representative, or the person the Internal Revenue Service has appointed to act as the federal partnership representative,

pursuant to Section 6223(a) of the Internal Revenue Code.

(11) "Final determination date" means the following:

(A) Except as provided in clause (B) or (C), if the federal adjustment arises from an Internal Revenue Service audit or other action by the Internal Revenue Service, the final determination date is the date on which the federal adjustment is a final determination under IC 6-3-4-6(d).

(B) For federal adjustments arising from an Internal Revenue Service audit or other action by the Internal Revenue Service, if the taxpayer filed as a member of a consolidated tax return filed under IC 6-3-4-14, a combined return filed under IC 6-3-2-2 or IC 6-5.5-5-1, or a return combined by the department under IC 6-3-2-2(p), the final determination date means the first date on which no related federal adjustments arising from that audit remain to be finally determined, as described in clause (A), for the entire group.

(C) If the federal adjustment results from filing an amended federal return, a federal refund claim, or an administrative adjustment request, the final determination date means the day on which the amended return, refund claim, administrative adjustment request, or other similar report was filed.

(12) "Final federal adjustment" means a federal adjustment after the final determination date for that federal adjustment has passed.

(13) "Indirect partner" means a partner in a partnership or pass through entity that itself holds an interest directly, or through another indirect partner, in a partnership or pass through entity.

(14) "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.

(15) "Nonresident partner" has the meaning provided in IC 6-3-4-12(n).

(16) "Partner" means a person or entity that holds an interest directly or indirectly in a partnership or other pass through entity.

(17) "Partner level adjustments report" means a report provided by a partnership to its partners as a result of a department action with regard to the partnership. A partner level adjustments report does not include an amended statement provided by a partnership or other entity as a result of an adjustment reported by the partnership.

(18) "Partnership" has the meaning set forth in IC 6-3-1-19.

(19) "Partnership level audit" means an examination by the Internal Revenue Service at the partnership level under Sections

6221 through 6241 of the Internal Revenue Code, as enacted by the Bipartisan Budget Act of 2015, Public Law 114-74, which results in federal adjustments.

(20) "Partnership return" means a return required to be filed by a partnership pursuant to IC 6-3-4-10. In the case of a partnership that is required to withhold tax or file a composite return pursuant to IC 6-3-4-12 or IC 6-5.5-2-8, the term also includes the returns or schedules required for tax withholding or composite filing. **In the case of a partnership that is an electing entity under IC 6-3-2.1, the term also includes the returns or schedules required for the pass through entity tax under IC 6-3-2.1.**

(21) "Pass through entity" means an entity defined in IC 6-3-1-35, other than a partnership, that: ~~is not subject to tax under IC 6-3.~~

**(A) is not subject to tax except as provided in IC 6-3-2-2.8(2), in the case of a corporation described in IC 6-3-2-2.8(2); or**

**(B) is not subject to tax except on its undistributed taxable income, in the case of an estate or a trust.**

(22) "Reallocation adjustment" means a federal adjustment resulting from a partnership level audit or an administrative adjustment request that changes the shares of one (1) or more items of partnership income, gain, loss, expense, or credit allocated to direct partners. A positive reallocation adjustment means the portion of a reallocation adjustment that would increase federal adjusted gross income or federal taxable income for one (1) or more direct partners, and a negative reallocation adjustment means the portion of a reallocation adjustment that would decrease federal adjusted gross income or federal taxable income for one (1) or more direct partners, according to Section 6225 of the Internal Revenue Code and the regulations under that section.

(23) "Resident partner" means a partner that is not a nonresident partner.

(24) "Review year" means the taxable year of a partnership that is subject to a partnership level audit, an administrative adjustment request, or an amended federal return that results in federal adjustments, regardless of whether any federal tax determined to be due is the responsibility of the partnership or partners.

(25) "Statement" means a form or schedule prescribed by the department through which a partnership or pass through entity reports tax attributes to its owners or beneficiaries.

(26) "Tax attribute" means any item of income, deduction, credit, receipts for apportionment, or other amount or status that determines a partner's liability under IC 6-3, IC 6-3.6, or IC 6-5.5.

(27) "Taxable year" means, in the case of a partnership, the year or partial year for which a partnership files a return for state and federal purposes and, in the case of a partner, the taxable year in which the partner reports tax attributes from the partnership.

(28) "Taxpayer" has the meaning set forth in IC 6-3-1-15 (in the case of the adjusted gross income tax) and IC 6-5.5-1-17 (in the case of the financial institutions tax) and, unless the context clearly indicates otherwise, includes a partnership subject to a partnership level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership.

(29) "Tiered partner" means any partner that is a partnership or pass through entity.

(30) "Unrelated business taxable income" has the meaning set forth in Section 512 of the Internal Revenue Code.

SECTION 12. IC 6-3-4.5-3, AS AMENDED BY P.L.137-2022, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 3. (a) If the department conducts an audit or investigation of a partnership, and the department determines that the partnership:

(1) did not correctly report any tax attribute for a taxable year; or

(2) did not correctly allocate any tax attribute for a taxable year;

the department may adjust or reallocate the tax attribute. If the department makes an adjustment or reallocation to one (1) or more tax attributes, the department shall provide a report of proposed partnership adjustments for the taxable year to the partnership.

(b) The report of proposed partnership adjustments shall list:

(1) the department's adjustments to tax attributes; and

(2) ~~the allocation of the department's adjustments to all affected direct partners.~~ **if the report of proposed partnership adjustments is not attributed to one (1) or more affected direct partners in proportion to their share of income from the partnership, the allocation of the department's adjustments to such affected direct partners. The portion of adjustments not specifically allocated to partners in the report of proposed partnership adjustments shall be considered to be allocated in proportion to their share of income from the partnership and adjusted to account for the partners whose adjustments are specifically allocated to them.**

(c) If the report of proposed partnership adjustments for a taxable year results in either:

(1) a potential increase in tax to one (1) or more direct partners; or

(2) if the partnership reported tax attributes that would result in a refund of tax to one (1) or more partners, a reduction in that refund;

such report shall be treated as a proposed assessment under IC 6-8.1-5 to the partnership.

(d) If the result for partnership adjustments for a taxable year results in:

(1) no direct increase in tax to any direct partner; and

(2) a change in tax attributes to one (1) or more direct partners that would result in a refund in excess of any refund claimed;

the department shall issue a report of proposed partnership adjustments to the partnership reflecting such adjustments. Any refund arising from a report of proposed partnership adjustments shall be issued to the partners, subject to the partner claiming the refund and any statute of limitations on such refunds. In the case of partnership adjustments otherwise described in this subsection that result from a partnership adjustment described in subsection (c), all such partnership adjustments shall be treated as adjustments to which subsection (c) applies.

SECTION 13. IC 6-3-4.5-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: **Sec. 3.5. If a partnership is assessed tax due pursuant to IC 6-3-2.1, IC 6-3-4-12, IC 6-5.5-2-8, or this chapter as a result of underreporting the tax due for one (1) or more partners, the provisions of this chapter for timeliness of assessments, reporting, and rights to appeal apply in the same manner as a report of proposed partnership adjustments, except as specifically provided in this chapter.**

SECTION 14. IC 6-3-4.5-6, AS ADDED BY P.L.159-2021, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 6. (a) Once a report of partnership adjustments is considered final, the partnership shall, not later than the applicable deadline:

(1) supply to its direct partners and the department a partner level adjustments report attributable to each partner in the form and manner prescribed by the department; ~~and~~

(2) remit any composite tax or withholding tax due under IC 6-3-4-12 or IC 6-5.5-2-8; **and**

**(3) remit any pass through entity tax due under IC 6-3-2.1.**

(b) If the partner is a tiered partner, the tiered partner shall, not later than the applicable deadline for the tiered partner:

(1) file an amended return for the taxable year and for any other affected year reporting its share of the adjustments;

(2) supply its owners or beneficiaries and the department amended statements reflecting the adjustments attributable to the owner or beneficiary, or a report, in the form and manner prescribed by the department; ~~and~~

(3) remit any tax due under IC 6-3, IC 6-3.6, or IC 6-5.5, including any **pass through entity tax,** composite tax or withholding tax due under **IC 6-3-2.1,** IC 6-3-4-12, IC 6-3-4-13, IC 6-3-4-15, and IC 6-5.5-2-8.

(c) Upon receipt of a partner level adjustments report or any statement from tiered partners arising from a partner level adjustments report, the taxpayer receiving the report or statement shall file an amended return for the taxable year reporting the adjustments along with any other affected year and remit any tax due not later than the applicable deadline for the partner.

(d) Notwithstanding any other provision of this chapter or IC 6-3-4-11:

(1) A partnership that has been issued a report of proposed partnership adjustments, or a tiered partner that is a partnership that has received a partner level adjustment report or statement arising from a report of final partnership adjustments, may elect to pay any tax due arising from a report of final partnership adjustments.

(2) Such election must be filed with the department not later than sixty (60) days after the department issues the report of proposed partnership adjustments or, in the case of an election by a tiered partner, not later than the date by which the tiered partner is required to file an amended return under this section.

(3) The computation of tax and other provisions governing this election shall be in a manner consistent with an election under section 9(c) of this chapter.

(4) If a partnership has made an election under this chapter to report and remit any tax due at the partnership level for a taxable year, the partnership shall be considered to have made a timely election under this subsection with regard to any adjustments in the report of partnership adjustments for that taxable year.

**(5) No election may be made under this subsection after April 30, 2023.**

SECTION 15. IC 6-3-4.5-8, AS AMENDED BY P.L.137-2022, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 8. (a) If a partnership:

(1) determines that it did not correctly report any tax attribute for a taxable year;

(2) determines that it did not correctly allocate any tax attribute for a taxable year; or

(3) receives final federal adjustments as a result of a federal partnership audit or administrative adjustment request for a taxable year;

the partnership shall file an amended partnership return with the department and provide its direct partners with amended statements or a report in the form and manner prescribed by the department reflecting the correctly reported and allocated tax attributes for any applicable year.

(b) If the partnership files an amended partnership return under this section for a taxable year:

(1) the partnership shall remit any composite tax or withholding tax due under IC 6-3-4-12 or IC 6-5.5-2-8 **and any pass through entity tax due under IC 6-3-2.1** on its direct partners resulting from the amended return at the time of filing;

(2) any tiered partners shall, not later than the applicable deadline for the tiered partner:

(A) file an amended return and, if applicable, remit any tax due under IC 6-3, IC 6-3.6, or IC 6-5.5, including any amounts due under **IC 6-3-2.1,** IC 6-3-4-12, IC 6-3-4-13, IC 6-3-4-15, or IC 6-5.5-2-8; and

(B) report any adjustments to the tiered partner's owners or beneficiaries by providing amended statements to the tiered partner's owners or beneficiaries, or a report in the form and manner prescribed by the department; and

(3) any direct or indirect partners who are not tiered partners and who are required to file a return under IC 6-3 or IC 6-5.5 or who have filed a return under IC 6-3 or IC 6-5.5 shall file amended returns with the department for any taxable year affected by the amended partnership return and remit any tax due not later than the applicable deadline for the partner.

(c) Notwithstanding any other provision of this chapter or IC 6-3-4-11:

(1) A partnership that has filed an amended partnership return under this section, or a tiered partner that is a partnership and that is a partner of a partnership that has filed an amended partnership

return under this section, may elect to pay any tax due arising from an amended partnership return.

(2) Such election must be filed with the department not later than the date on which the amended partnership return is filed with the department or, in the case of an election by a tiered partner that is a partnership, not later than the date by which the tiered partner is required to file an amended return under this section.

(3) The computation and payment of tax and other provisions governing this election shall be in a manner consistent with an election under section 9(c) of this chapter.

(4) If a partnership has made an election under this chapter to report and remit all tax otherwise due at the partnership level for a taxable year, the partnership shall be considered to have made a timely election under this subsection with regard to any changes arising from an amended return under this section for that taxable year.

**(5) No election may be made under this subsection for an amended return filed after April 30, 2023.**

(d) If the department determines that a partnership:

(1) did not correctly report any tax attributes for a taxable year; ~~or~~

(2) did not correctly allocate any tax attributes for a taxable year; **or**

**(3) did not report the proper amount of tax under IC 6-3-2.1, IC 6-3-4-12, or IC 6-5.5-2-8;**

the department may proceed against the partnership in the manner provided under sections 3 through 6 of this chapter.

SECTION 16. IC 6-3-4.5-9, AS AMENDED BY P.L.178-2022(ts), SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 9. (a) Partnerships and partners shall report final federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as required under this section.

(b) Final federal adjustments subject to the requirements of this section, except those subject to a properly made election under subsection (c), shall be reported as follows:

(1) Not later than the applicable deadline, the partnership shall:

(A) file an amended partnership return for the review year and any other taxable year affected by the final federal adjustments with the department as provided in section 8 of this chapter and provide any other information required by the department;

(B) notify each of its direct partners of their distributive share of the final federal adjustments as provided in section 8 of this

chapter for all affected taxable years for which the partnership filed an amended partnership return by an amended statement or a report in the form and manner prescribed by the department; ~~and~~

(C) file an amended composite return for direct partners and an amended withholding return for direct partners for the review year and any affected taxable years as otherwise required by IC 6-3-4-12 or IC 6-5.5-2-8 and pay any tax due for the taxable years; **and**

**(D) if the partnership is an electing entity, file an amended return under IC 6-3-2.1 for the review year and any affected taxable year and pay any tax due for the taxable year.**

(2) Each direct partner that is subject to tax under IC 6-3, IC 6-3.6, or IC 6-5.5 shall, on or before the applicable deadline:

(A) file an amended return as provided in section 8 of this chapter reporting their distributive share of the adjustments reported to them under subdivision (1)(B) for the taxable year in which affected taxable year attributes would be reported by the direct partner as provided in section 8 of this chapter; and

(B) pay any additional amount of tax due as if final federal partnership adjustments had been properly reported, less any credit for related amounts paid or withheld and remitted on behalf of the direct partner.

(3) Each tiered partner shall treat any final federal partnership adjustments under this section in a manner consistent with the treatment of tiered partners under section 8 of this chapter.

(c) Except as provided in subsection (d), an audited partnership making an election under this subsection shall:

(1) not later than the applicable deadline, file an amended partnership return for the review year and for any other affected taxable year elected by the audited partnership, including information as required by the department, and notify the department that it is making the election under this subsection; and

(2) not later than ninety (90) days after the applicable deadline, pay an amount, determined as follows, in lieu of taxes owed by its direct or indirect partners:

(A) Exclude from final federal adjustments the distributive share of these adjustments reported to a direct exempt partner that is not unrelated business income.

(B) For the total distributive shares of the remaining final

federal adjustments reported to direct corporate partners and to direct exempt partners, apportion and allocate such adjustments as provided under IC 6-3-2-2 or IC 6-3-2-2.2 (in the case of the adjusted gross income tax) or IC 6-5.5-4 (in the case of the financial institutions tax), and multiply the resulting amount by the tax rate for the taxable year under IC 6-3-2-1(c), IC 6-3-2-1.5, or IC 6-5.5-2-1, as applicable.

(C) For the total distributive shares of the remaining final federal adjustments reported to nonresident direct partners other than tiered partners or corporate partners, determine the amount of such adjustments which is Indiana source income under IC 6-3-2-2 or IC 6-3-2-2.2, and multiply the resulting amount by the tax rate under IC 6-3-2-1(b), and if applicable IC 6-3.6. If a partnership is unable to determine whether a nonresident is subject to tax under IC 6-3.6, or to determine in what county the nonresident is subject to tax under IC 6-3.6, tax shall also be imposed at the highest rate for which a county imposes a tax under IC 6-3.6 for the taxable year.

(D) For the total distributive shares of the remaining final federal adjustments reported to tiered partners:

(i) determine the amount of any adjustment that is of a type that it would be subject to sourcing in Indiana under IC 6-3-2-2, IC 6-3-2-2.2, or IC 6-5.5-4, as applicable, and determine the portion of this amount that would be sourced to Indiana;

(ii) determine the amount of any adjustment that is of a type that it would not be subject to sourcing to Indiana by a nonresident partner under IC 6-3-2-2, IC 6-3-2-2.2, or IC 6-5.5-4, as applicable;

(iii) determine the portion of the amount determined under item (ii) that can be established, as prescribed by the department by rule under IC 4-22-2, to be properly allocable to nonresident indirect partners or other partners not subject to tax on the adjustments; and

(iv) multiply the sum of the amounts determined in items (i) and (ii) reduced by the amount determined in item (iii) by the highest combined rate for the taxable year under IC 6-3-2-1(b) and IC 6-3.6 for any county, the rate under IC 6-3-2-1(c), or the rate under 6-5.5-2-1 for the taxable year, whichever is highest.

(E) For the total distributive shares of the remaining final federal adjustments reported to resident individual, estate, or

trust direct partners, multiply that amount by the tax rate under IC 6-3-2-1(b) and IC 6-3.6. If a partnership does not reasonably ascertain the county of residence for an individual direct partner, the rate under IC 6-3.6 for that partner shall be treated as the highest rate imposed in any county under IC 6-3.6 for the taxable year.

(F) Add an amount equal to any credit reduction under IC 6-3-3, IC 6-3.1, and IC 6-5.5 attributable as a result of final federal adjustments.

(G) Add the amounts determined in clauses (B), (C), (D)(iv), (E), and (F). For purposes of determining interest and penalties, the due date of payment shall be the due date of the partnership's return under IC 6-3-4-10 for the taxable year, determined without regard to any extensions.

(d) Final federal adjustments subject to an election under subsection (c) shall not include:

(1) the distributive share of final federal adjustments that would constitute income derived from a partnership to any direct or indirect partner that is a corporation taxable under IC 6-3-2-1(c), IC 6-3-2-1.5, or IC 6-5.5-2-1 and is considered unitary to the partnership; **or**

~~(2) any final federal adjustments resulting from an administrative adjustment request; or~~

~~(3)~~ **(2)** any other circumstances that the department determines would result in avoidance or evasion of any tax otherwise due from one (1) or more partners under IC 6-3 or IC 6-5.5.

**(e) No election under subsection (c) may be made for federal audit adjustments received by the department after April 30, 2023.**

~~(c)~~ **(f)** Notwithstanding IC 6-3-4-11, an audited partnership not otherwise subject to any reporting or payment obligations to Indiana that makes an election under subsection (c) consents to be subject to Indiana law related to reporting, assessment, payment, and collection of Indiana tax calculated under the election.

SECTION 17. IC 6-5.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: Sec. 1. (a) Except as provided in this section, a unitary group consisting of at least two (2) taxpayers shall file a combined return covering all the operations of the unitary business and including all of the members of the unitary business. However, only one (1) combined return needs to be filed, as provided in IC 6-5.5-6-1.

(b) If the department or taxpayer determines that the result of applying this section or article do not fairly represent the taxpayer's

income within Indiana or the taxpayer's income within Indiana may be more fairly represented by a separate return, the taxpayer may petition for and the department may allow, or the department may require, in respect to all or a part of the taxpayer's business activity any of the following:

(1) Separate accounting.

(2) The filing of a separate return for the taxpayer.

(3) A reallocation of tax items between a taxpayer and a member of the taxpayer's unitary group **or an entity that would be a member of a taxpayer's unitary group if it were transacting business in Indiana.**

**For purposes of this subsection, "tax items" means gross income, deductions, gains, losses, and credits used in computing the tax under this article, except the term shall exclude dividends or other distributions regardless of whether the amounts are deductible or taxable in computing taxable income under the Internal Revenue Code.**

(c) Income apportioned under this article must reflect a change in adjusted gross income that is required to comply with a department order under this section.

SECTION 18. IC 6-5.5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: Sec. 2. A combined return must include the adjusted gross income of all members of the unitary group, even if some of the members would not otherwise be subject to taxation under this article. The department may require a member of a unitary group to provide any information that is needed by the department to determine the unitary group's apportioned income under this article. However, income of corporations or other entities organized in foreign countries, except a foreign bank (or its subsidiary) that transacts business in the United States, shall not be included in the combined return. In ~~addition, the taxpayer shall eliminate, in~~ calculating adjusted gross income, **the taxpayer shall eliminate** all income and deductions from transactions between entities that are included in the ~~unitary group.~~ **combined return. In addition, in computing receipts for the apportionment factor under IC 6-5.5-2-4(2), the taxpayer shall eliminate receipts between unitary group members included in the combined return.**

SECTION 19. IC 6-8.1-1-1, AS AMENDED BY P.L.138-2022, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 1. "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the supplemental wagering tax (IC 4-33-12); the

riverboat wagering tax (IC 4-33-13); the slot machine wagering tax (IC 4-35-8); the type II gambling game excise tax (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the utility receipts and utility services use taxes (IC 6-2.3) (repealed); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); **the pass through entity tax (IC 6-3-2.1);** the supplemental net income tax (IC 6-3-8) (repealed); the county adjusted gross income tax (IC 6-3.5-1.1) (repealed); the county option income tax (IC 6-3.5-6) (repealed); the county economic development income tax (IC 6-3.5-7) (repealed); the local income tax (IC 6-3.6); the auto rental excise tax (IC 6-6-9); the financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a reciprocal agreement under IC 6-8.1-3; the vehicle excise tax (IC 6-6-5); the aviation fuel excise tax (IC 6-6-13); the commercial vehicle excise tax (IC 6-6-5.5); the excise tax imposed on recreational vehicles and truck campers (IC 6-6-5.1); the hazardous waste disposal tax (IC 6-6-6.6) (repealed); the heavy equipment rental excise tax (IC 6-6-15); the vehicle sharing excise tax (IC 6-6-16); the cigarette tax (IC 6-7-1); the closed system cartridge tax (IC 6-7-2-7.5); the electronic cigarette tax (IC 6-7-4); the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the petroleum severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-20-18); the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-20-18); and any other tax or fee that the department is required to collect or administer.

SECTION 20. IC 6-8.1-5-2, AS AMENDED BY P.L.138-2022, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)]: Sec. 2. (a) Except as otherwise provided in this section and section 2.5 of this chapter, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or the following:

(1) The due date of the return.

(2) In the case of a return filed for the state gross retail or use tax, the gasoline use tax, the gasoline tax (including the inventory tax), the special fuel tax (including the inventory tax), the motor carrier fuel tax (including the inventory tax), the oil inspection fee, the cigarette tax, the tobacco products tax, any county

innkeeper's taxes imposed under IC 6-9, any food and beverage taxes imposed under IC 6-9, any county or local admissions taxes imposed under IC 6-9, or the petroleum severance tax, the end of the calendar year which contains the taxable period for which the return is filed.

(3) In the case of the use tax, three (3) years from the end of the calendar year in which the first taxable use, other than an incidental nonexempt use, of the property occurred.

(b) If a person files a return for the utility receipts tax (IC 6-2.3) (repealed), adjusted gross income tax (IC 6-3), **pass through entity tax (IC 6-3-2.1),** supplemental net income tax (IC 6-3-8) (repealed), county adjusted gross income tax (IC 6-3.5-1.1) (repealed), county option income tax (IC 6-3.5-6) (repealed), local income tax (IC 6-3.6), or financial institutions tax (IC 6-5.5) that understates the person's income, as that term is defined in the particular income tax law, by at least twenty-five percent (25%), the proposed assessment limitation is six (6) years instead of the three (3) years provided in subsection (a).

(c) In the case of the vehicle excise tax (IC 6-6-5), the tax shall be assessed as provided in IC 6-6-5 and shall include the penalties and interest due on all listed taxes not paid by the due date. A person that fails to properly register a vehicle as required by IC 9-18 (before its expiration) or IC 9-18.1 and pay the tax due under IC 6-6-5 is considered to have failed to file a return for purposes of this article.

(d) In the case of the commercial vehicle excise tax imposed under IC 6-6-5.5, the tax shall be assessed as provided in IC 6-6-5.5 and shall include the penalties and interest due on all listed taxes not paid by the due date. A person that fails to properly register a commercial vehicle as required by IC 9-18 (before its expiration) or IC 9-18.1 and pay the tax due under IC 6-6-5.5 is considered to have failed to file a return for purposes of this article.

(e) In the case of the excise tax imposed on recreational vehicles and truck campers under IC 6-6-5.1, the tax shall be assessed as provided in IC 6-6-5.1 and must include the penalties and interest due on all listed taxes not paid by the due date. A person that fails to properly register a recreational vehicle as required by IC 9-18 (before its expiration) or IC 9-18.1 and pay the tax due under IC 6-6-5.1 is considered to have failed to file a return for purposes of this article. A person that fails to pay the tax due under IC 6-6-5.1 on a truck camper is considered to have failed to file a return for purposes of this article.

(f) In the case of a credit against a listed tax based on payments of taxes to a state or local jurisdiction outside Indiana or payments of amounts that are subsequently refunded or returned, a proposed

assessment for the refunded or returned credit must be issued by the later of:

(1) the date by which a proposed assessment must be issued under this section; or

(2) one hundred eighty (180) days from the date the taxpayer notifies the department of the refund or return of payment.

For purposes of this subsection, if a taxpayer receives a refund of an amount paid by or on behalf of the taxpayer for a listed tax, that refund shall not be considered the payment of an amount that is subsequently refunded or returned.

(g) If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment, **except as provided in subsection (l).**

(h) If any part of a listed tax has been erroneously refunded by the department, the erroneous refund may be recovered through the assessment procedures established in this chapter. An assessment issued for an erroneous refund must be issued within the later of:

(1) the period for which an assessment could otherwise be issued under this section; or

(2) whichever is applicable:

(A) within two (2) years after making the refund; or

(B) within five (5) years after making the refund if the refund was induced by fraud or misrepresentation.

(i) If, before the end of the time within which the department may make an assessment, the department and the person agree to extend that assessment period, the period may be extended according to the terms of a written agreement signed by both the department and the person. The agreement must contain:

(1) the date to which the extension is made; and

(2) a statement that the person agrees to preserve the person's records until the extension terminates.

The department and a person may agree to more than one (1) extension under this subsection.

(j) Except as otherwise provided in subsection (k), if a taxpayer's federal taxable income, federal adjusted gross income, or federal income tax liability for a taxable year is modified due to a modification as provided under IC 6-3-4-6(c) and IC 6-3-4-6(d) (for the adjusted gross income tax), or a modification or alteration as provided under IC 6-5.5-6-6(c) and IC 6-5.5-6-6(e) (for the financial institutions tax), then the date by which the department must issue a proposed assessment under section 1 of this chapter for tax imposed under IC 6-3

is extended to six (6) months after the date on which the notice of modification is filed with the department by the taxpayer.

(k) The following apply:

(1) This subsection applies to partnerships whose taxable year:

(A) begins after December 31, 2017;

(B) ends after August 12, 2018; or

(C) begins after November 2, 2015, and before January 1, 2018, and for which a valid election under United States Treasury Regulation 301.9100-22 is in effect;

and to the partners of such partnerships, including any partners, shareholders, or beneficiaries of a pass through entity that is a partner in such partnership.

(2) Notwithstanding any other provision of this article, if a partnership is subject to federal income tax liability or a federal tax adjustment at the partnership level as the result of a modification under Sections 6221 through 6241 of the Internal Revenue Code, the date on which the department must issue a proposed assessment to either the partners or the partnership shall be the later of:

(A) the date on which a proposed assessment must otherwise be issued to the partner or the partnership under this section or IC 6-3-4.5 with regard to the taxable year of the partnership to which the modification is taxed at the partnership level; or

(B) December 31, 2021.

(3) For purposes of this section and IC 6-8.1-9-1, a modification under this subsection shall be considered a modification to the federal taxable income, federal adjusted gross income, or federal income tax liability of both the partners and the partnership within the meaning of IC 6-3-4-6 and IC 6-5.5-6-6, and shall be considered to be included in the federal taxable income or federal adjusted gross income of both the partners and partnerships for purposes of this article and IC 6-5.5.

(4) If a modification made to a partnership for federal income tax purposes is reported to the partners to determine the partners' respective federal taxable income, federal adjusted gross income, or federal income tax liability, including reporting to partners as the result of an election made under Section 6226 of the Internal Revenue Code, subdivision (2) shall not apply, and those modifications shall be treated as modifications to the partners' federal taxable income, federal adjusted gross income, or federal income tax liability for purposes of the following:

(A) This section.

(B) IC 6-3-4-6.
(C) IC 6-5.5-6-6.
(D) IC 6-8.1-9-1.

**(l) Notwithstanding any other provision, a nonresident individual is considered to have filed a return for purposes of this section for a taxable year if the individual does not file a return otherwise required under IC 6-3-4-1 for a taxable year and all of the following apply:**

**(1) the:**

**(A) individual did not have income from sources within Indiana; or**

**(B) only income derived from sources within Indiana and includible in the individual's adjusted gross income is distributive share income from one (1) or more pass through entities (as defined by IC 6-3-1-35);**

**(2) the individual is not a resident of Indiana for any portion of the taxable year;**

**(3) the individual does not request a reduction in tax withholding for a pass through entity under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15 for the taxable year; and**

**(4) all pass through entities from which the individual derives income from Indiana sources:**

**(A) file a composite return required under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15; and**

**(B) include the individual on the composite return.**

**(m) The following provisions apply to subsection (l):**

**(1) If an individual is married and files a joint federal tax return with the individual's spouse, the individual is considered to have filed a return for purposes of this section only if both the individual and the individual's spouse meet the conditions under subsection (l)(1) through (l)(4).**

**(2) If an individual does not file a return, the last date for assessment with regard to the individual's share of income from a pass through entity shall be determined at the pass through entity and shall be determined separately for each pass through entity.**

**(3) In the event the individual files a return, the period for assessment shall be determined based on the individual's filing unless a different period for assessment is prescribed under this title.**

**(4) The individual is required to file a return to request a refund or carryforward of an overpayment for a taxable year.**

**(5) If the individual has a net operating loss deduction under IC 6-3-2-2.5 or IC 6-3-2-2.6, or a credit carryforward allowable under IC 6-3-3 or IC 6-3.1 for the taxable year, the amount of net operating loss or credit carryforward shall be reduced to reflect the amount of net operating loss or credit carryforward that otherwise would have been allowable for the taxable year.**

SECTION 21. [EFFECTIVE JANUARY 1, 2022 (RETROACTIVE)] **(a) This SECTION applies to the election and imposition of the pass through entity tax pursuant to IC 6-3-2.1, as added by this act, for tax years ending before January 1, 2023.**

**(b) For the applicable period, the tax shall be paid and filed in conjunction with and consistent with the filing of a composite tax return pursuant to IC 6-3-4-12 or IC 6-3-4-13.**

**(c) Notwithstanding any other provision, no estimated payments shall be due for the applicable period other than any such payment that is currently required for purposes of withholding tax pursuant to IC 6-3-4-12 or IC 6-3-4-13.**

**(d) All provisions of IC 6-3-2.1, as added by this act, shall apply to the applicable period unless any such provision is inconsistent with the provisions and procedures applicable to the filing of composite returns pursuant to IC 6-3-4-12 or IC 6-3-4-13.**

**(e) A pass through entity that elects to pay the tax imposed by IC 6-3-2.1, as added by this act, for the applicable period will not be subject to an underpayment penalty pursuant to IC 6-8.1-10-2.1(a)(2) for failure to pay any tax due pursuant to IC 6-3-2.1, as added by this act, for any such tax not remitted as of the due date of the return, including extensions. This provision does not waive any interest due on such amounts pursuant to IC 6-8.1-10-1.**

**(f) Notwithstanding any provision to the contrary in IC 6-8.1-10-1 or IC 6-8.1-10-2.1, if the tax under IC 6-3-2.1, as added by this act, is due before August 31, 2024, interest and penalty for late payment of the tax shall be waived for the period from the due date to August 30, 2024. Interest and penalty shall be due on any amounts unpaid after August 30, 2024, in the manner otherwise provided by law.**

SECTION 22. **An emergency is declared for this act.**

President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____